

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer*: No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation*: In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and
2. *Not seek renewal* of this *policy*; and
3. *Not apply for any flood insurance* under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* of those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

#### Article 11—What Law Governs

This *policy* is governed by the *flood insurance* regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

*In witness whereof*, the Insurer has executed and attested these presents.

JAMES L. WITT,  
Director, Federal Emergency Management  
Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067-0021.)

[58 FR 62439, Nov. 26, 1993]

## PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

### Subpart A—Issuance of Policies

Sec.

- 62.1 Purpose of part.
- 62.2 Definitions.
- 62.3 Servicing agent.
- 62.4 Limitations on sale of policies.
- 62.5 Premium refund.
- 62.6 Minimum commissions.

## Federal Emergency Management Agency

## § 62.4

### Subpart B—Claims Adjustment and Judicial Review

- 62.21 Claims adjustment.  
62.22 Judicial review.

### Subpart C—Write-Your-Own (WYO) Companies

- 62.23 WYO Companies authorized.  
62.24 WYO Company participation criteria: new applicants.

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

SOURCE: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

EDITORIAL NOTES: 1. At 61 FR 51219, Oct. 1, 1996, §62.23 was revised, effective Oct. 31, 1996. The superseded text appears in the Oct. 1, 1995, revision of title 44.

2. At 61 FR 51221, Oct. 1, 1996, Appendix B to part 62 was revised, effective Oct. 1, 1996. The superseded text of the revised appendix appears in the Oct. 1, 1995, revision of title 44.

### Subpart A—Issuance of Policies

#### § 62.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

#### § 62.2 Definitions.

The definitions set forth in part 59 of this subchapter are applicable to this part.

#### § 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under

the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) National Con-Serv, Inc., whose offices are located in Rockville, Maryland, is the servicing agent for the Federal Insurance Administration.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 58 FR 62447, Nov. 26, 1993]

#### § 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in §61.6 of this subchapter, in any area the Administrator designates in part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

**§ 62.5 Premium refund.**

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice; or the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be pro rata but with retention of the expense constant.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 49 FR 33658, Aug. 24, 1984; 53 FR 16279, May 6, 1988]

**§ 62.6 Minimum commissions.**

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than \$10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First \$2,000 of Premium .....	15
Excess of \$2,000 .....	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amount	Commissions (percent)
First \$2,000 of Premium .....	15
Excess of \$2,000 .....	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981, as amended at 53 FR 15221, Apr. 28, 1988; 57 FR 19541, May 7, 1992]

**Subpart B—Claims Adjustment and Judicial Review**

**§ 62.21 Claims adjustment.**

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance

adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and parts 61 and 62 of this subchapter.

#### **§ 62.22 Judicial review.**

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the Federal Insurance Administrator in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Federal Insurance Administrator of the Federal Emergency Management Agency.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 43061 Sept. 30, 1982; 49 FR 33879, Aug. 27, 1984]

### **Subpart C—Write-Your-Own (WYO) Companies**

#### **§ 62.23 WYO Companies authorized.**

(a) Pursuant to section 1345 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies whereby such companies may offer flood insurance coverage under the Program to eligible applicants for such insurance, including policyholders insured by them under their own property business lines of insurance pursu-

ant to their customary business practices including their usual arrangements with agents and producers, in any State in which such WYO Companies are licensed to engage in the business of property insurance. Arrangements entered into by WYO Companies under this subpart shall be in the form and substance of the standard arrangement, entitled "Financial Assistance/Subsidy Arrangement", a copy of which is included in appendix A of this part and made a part of these regulations.

(b) Any duly licensed insurer so engaged in the Program shall be a WYO Company.

(c) A WYO Company is authorized to arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under parts 61 and 64 of this subchapter who submits an application to the WYO Company; coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this subpart, a WYO Company shall use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act and regulations prescribed by the Administrator under the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. In furtherance of this end, the Administrator has established "A Plan

to Maintain Financial Control for Business Written Under the Write Your Own Program”, a copy of which is included in appendix B of this part and made a part of these regulations.

(g) WYO Companies shall not be agents of the Federal Government and are solely responsible for their obligations to their insureds under any flood insurance policies issued under agreements entered into with the Administrator.

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be used by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance through the NFIP WYO Program.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan. Transactions reported by the WYO Company under the WYO Transaction Record Reporting and Processing Plan will be analyzed by the NFIP Bureau & Statistical Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions that have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from an agent or a producer, the agent or producer shall be notified so that the business can be placed

through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrent expiration dates with other policies covering the property.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be used by WYO Companies.

(1) Under the terms of the Arrangement set forth at appendix A of this part, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claim adjustments shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims is the responsibility of the WYO Company. The responsibility for providing a proper adjustment for combined wind and water claims is to be conducted by listing in concert with the Single Adjuster provisions listed in appendix A.

(2) The WYO Company may use its staff adjusters, independent adjusters, or both. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense

allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility for defending claims will be upon the Write Your Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be used.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of the General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Bureau and Statistical Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as: nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim

adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of the General Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Select a Certified Public Accountant (CPA) firm to conduct biennial audits of the financial, claims and underwriting records of the company. These audits shall be performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States (commonly known as the "yellow book"). FIA further requires that pre-selected policy and claims files the CPA firm is asked to review are in addition to any files that the auditors may select for their sample. A report of the detailed biennial audit conducted will be filed with the FIA which, after a review of the audit report, will convey its determination to the Standards Committee. The CPA firm chosen to conduct the audit is expected to use qualified, skilled persons with the requisite background in property insurance and a knowledge of the NFIP. Persons performing claims audits are expected to possess claims expertise which would allow them to ascertain whether the scope of damage was proper, and if all applicable NFIP policy provisions were properly followed. Persons performing underwriting audits should be able to ascertain if the risk has been properly rated, which would necessitate being aware of special NFIP rating situations, such as elevated buildings.

(2) Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual. Transactions reported to the National Flood Insurance Program's (NFIP's) Bureau and Statistical Agent by the WYO Company under the WYO Transaction Record Reporting and Processing Plan and the WYO Accounting Procedures Manual will be analyzed

by the Bureau and Statistical Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the totals generated from transaction reports with those submitted on WYO Company reconciliation reports.

(3) Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

(4) Cooperate with FIA in the implementation of a claims reinspection program.

(5) Cooperate with FIA in the verification of risk rating information.

(6) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can use its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this title relative to the administration of the NFIP.

(l)(1) WYO Companies may, on a voluntary basis, elect to participate in the Mortgage Portfolio Protection Program (MPPP), under which they can offer, as a last resort, flood insurance at special high rates, sufficient to recover the full cost of this program in recognition of the uncertainty as to the degree of risk a given building presents due to the limited underwriting data required, to properties in a lending institution's mortgage portfolio to achieve compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Flood insurance policies under the MPPP may only be issued for those properties that:

(i) Are determined to be located within special flood hazard areas of communities that are participating in the NFIP, and

(ii) Are not covered by a flood insurance policy even after a required series of notices have been given to the prop-

erty owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

(2) WYO Companies participating in the MPPP must provide a detailed implementation package to any lending institution that, on a voluntary basis, chooses to participate in the MPPP to ensure the lending institution has full knowledge of the criteria in that program and must obtain a signed receipt for that package from the lending institution. Participating WYO Companies must also maintain evidence of compliance with paragraph (l)(3) of this section for review during the audits and reviews required by the WYO Financial Control Plan contained in appendix B of this part.

(3) The mortgagor must be protected against the lending institution's arbitrary placing of flood insurance for which the mortgagor will be billed by being sent three notification letters as described in paragraphs (l)(4) through (6) of this section.

(4) The initial notification letter must:

(i) State the requirements of the Flood Disaster Protection Act of 1973, as amended;

(ii) Announce the determination that the mortgagor's property is in an identified special flood hazard area as delineated on the appropriate FEMA map, necessitating flood insurance coverage for the duration of the loan;

(iii) Describe the procedure to follow should the mortgagor wish to challenge the determination;

(iv) Request evidence of a valid flood insurance policy or, if there is none, encourage the mortgagor to obtain a Standard Flood Insurance Policy (SFIP) promptly from a local insurance agent (or WYO Company);

(v) Advise that the premium for a MPPP policy is significantly higher than a conventional SFIP policy and advise as to the option for obtaining less costly flood insurance; and

(vi) Advise that a MPPP policy will be purchased by the lender if evidence of flood insurance coverage is not received by a date certain.

(5) The second notification letter must remind the mortgagor of the previous notice and provide essentially the same information.

(6) The final notification letter must:

(i) Enclose a copy of the flood insurance policy purchased under the MPPP on the mortgagor's (insured's) behalf, together with the Declarations Page,

(ii) Advise that the policy was purchased because of the failure to respond to the previous notices, and

(iii) Remind the insured that similar coverage may be available at significantly lower cost and advise that the policy can be cancelled at any time during the policy year and a pro rata refund provided for the unearned portion of the premium in the event the insured purchases another policy that is acceptable to satisfy the requirements of the 1973 Act. "(Approved by the Office of Management and Budget under OMB control number 3067-0229.)"

[61 FR 51219, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51219, Oct. 1, 1996, § 62.23 was revised, effective Oct. 31, 1996.

#### **§ 62.24 WYO Company participation criteria: new applicants.**

New companies seeking to participate in the WYO Program, as well as former WYO Companies seeking to return to the WYO Program, must meet standards for financial capability and stability, for statistical and financial reporting, and for commitment to Program objectives.

(a) To demonstrate the ability to meet the financial requirements, an applicant for entry or reentry into the WYO Program must:

(1) be a licensed property insurance company;

(2) have a five (5) year history of writing property insurance;

(3) disclose any legal proceedings, suspensions, judgments, settlements, or agreements reached with any State insurance department, State attorney general, State corporation commission, or the Federal government during the immediate prior five (5) years regarding the company's business practices;

(4) submit its most recent National Association of Insurance Commissioners (NAIC) annual statement;

(5) submit, as data become available, information to indicate that the company meets or exceeds NAIC standards for risk-based capital and surplus; and

(6) submit its last State or regional audit, which should contain no material negative findings.

(b) An applicant for entry or reentry into the WYO Program must also pass a test to determine the company's ability to process flood insurance and meet the Transaction Record Reporting and Processing (TRRP) Plan requirements of the WYO Financial Control Plan. Unless the test requirement is waived, e.g., where the company's reporting requirements will be fulfilled by an already qualified performer, the applicant must prepare and submit test output monthly tape(s) and monthly financial statements and reconciliations for processing by the NFIP Bureau and Statistical Agent contractor. For test purposes, no error tolerance will be allowed. If the applicant fails the initial test, a second test will be run, which the applicant must pass to participate in the Program.

(c) To satisfy the requirement for commitment to Program goals, including marketing of flood insurance policies, the company shall submit information concerning the company's plans for the Write Your Own Program including plans for the training and support of producers and staff, marketing plans and sales targets, and claims handling and disaster response plans. Applicants must also identify those aspects of their planned flood insurance operations to be performed by another organization, managing agent, another WYO Company, a WYO vendor, a service bureau or related organization. Applicant companies shall also name, in addition to a Principal Coordinator, a corporate officer point of contact— an individual, e.g., at the level of a Senior Executive Vice President, who reports directly to the Chief Executive Officer or the Chief Operating Officer. Each applicant shall furnish the latest available information regarding the number of its fire, allied lines, farmowners multiple peril, homeowners multiple peril, and commercial multiple peril policies in force, by line, and the company's Best's Financial Size Category



for the purpose of setting marketing goals.

[59 FR 38572, July 29, 1994]

APPENDIX A TO PART 62—FEDERAL  
EMERGENCY MANAGEMENT AGENCY,  
FEDERAL INSURANCE ADMINISTRA-  
TION, FINANCIAL ASSISTANCE/SUB-  
SIDY ARRANGEMENT

*Purpose:* To assist the company in underwriting flood insurance using the Standard Flood Insurance Policy.

*Accounting Data:* Pursuant to Section 1310 of the Act, a Letter of Credit shall be issued for payment as provided for herein from the National Flood Insurance Fund.

*Effective Date:* October 1, 1996.

*Issued By:* Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

ARTICLE I—FINDINGS, PURPOSE, AND  
AUTHORITY

Whereas, the Congress in its “Finding and Declaration of Purpose” in the National Flood Insurance Act of 1968, as amended, (“the Act”) recognized the benefit of having the National Flood Insurance Program (the Program) “carried out to the maximum extent practicable by the private insurance industry”; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of Section 1345 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (Section 1304 of the Act); and

Whereas, the insurer (hereinafter the “Company”) under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/ Subsidy Arrangement has been developed to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, one of the primary objectives of the program is to provide coverage to the maximum number of

structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement and the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

ARTICLE II—UNDERTAKINGS OF THE  
COMPANY

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including:

1.1 Community Eligibility/Rating Criteria.

1.2 Policyholder Eligibility Determination.

1.3 Policy Issuance.

1.4 Policy Endorsements.

1.5 Policy Cancellations.

1.6 Policy Correspondence.

1.7 Payment of Agents’ Commissions.

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards and the Financial Control Plan. Other technical and policy material published by FEMA and FIA will also provide guidance to the Company.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Transaction Record Reporting and Processing Plan for the Write Your Own (WYO) Program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—15 days;

1.3 Cancellation Processing—15 days;

1.4 Claims Draft Processing—7 days from completion of file examination;

1.5 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.6 For the elements of work enumerated above, the elapsed time shown is from the date of receipt through the date of mail out. Days means working days, not calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards and the marketing guidelines provided for in Section G. below can be a factor considered by the Federal Insurance Administrator (the Administrator) in requiring corrective action by the Company, in determining the continuing

participation of the Company in the Program, or in taking other action, e.g., limiting the Company's authority to write new business.

C. To ensure maximum responsiveness to the National Flood Insurance Program's (NFIP) policyholders following a catastrophic event, e.g., a hurricane, involving insured wind and flood damage to policyholders, the Company shall agree to the adjustment of the combined flood and wind losses utilizing one adjuster under an NFIP-approved Single Adjuster Program in the following cases and under procedures issued by the Administrator:

1.0 Where the flood and wind coverage is provided by the Company;

2.0 Where the flood coverage is provided by the Company and the wind coverage is provided by a participating State Property Insurance Plan, Windpool Association, Beach Plan, Joint Underwriting Association, FAIR Plan, or similar property insurance mechanism; and

3.0 Where the flood coverage is provided by the Company and the wind coverage is provided by another property insurer and the State Insurance Regulator has determined that such property insurer shall, in the interest of consumers, facilitate the adjustment of its wind loss by the adjuster engaged to adjust the flood loss of the Company.

D. Policy Issuance.

1.0 The flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company shall market flood insurance policies in a manner consistent with the marketing guidelines established by the Federal Insurance Administration.

#### ARTICLE III—LOSS COSTS, EXPENSES, EXPENSE REIMBURSEMENT, AND PREMIUM REFUNDS

A. The Company shall be liable for operating, administrative and production expenses, including any State premium taxes, dividends, agent's commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding surcharges on flood insurance premium and guaranty fund assessments.

B. The Company shall be entitled to withhold, on a provisional basis, as operating and administrative expenses, including agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Section C. of this Article,

which amount shall be 32.6% of the Company's written premium on the policies covered by this Arrangement. The final amount retained by the Company shall be determined by an increase or decrease depending on the extent to which the Company meets the marketing goals for the 1996–1997 Arrangement year contained in marketing guidelines established pursuant to Article II. G.

The adjustment in the amount retained by the Company shall be made after the end of the 1996–1997 Arrangement year. Any decrease from 32.6% made as a result of a Company not meeting its marketing goals shall be directly related to the extent to which the Company's goal was not achieved, but shall not exceed two (2) percentage points (providing for a minimum of 30.6%).

The increase, which shall be distributed among the Companies exceeding their marketing goals, shall be drawn from a pool composed of the difference between 32.6% of all WYO Companies' written premium in Arrangement year 1996–1997 and the total amount, prior to the increase, provided to the Companies on the basis of the extent to which they have met their marketing goals. A distribution formula will be developed and distributed to WYO Companies that will consider the extent to which the Company has exceeded its goal and the size of the Company's book of business in relation to the total number of WYO policies. The amount of any increase shall be paid promptly to the Company after the end of the 1996–1997 Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to a "Fee Schedule" coordinated with the Company and provided by the Administrator.

3. Special allocated loss expenses shall be reimbursed to the Company in accordance with guidelines issued by the Administrator.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account(s) established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Administrator along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company that are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his/her decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or

expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from Federal flood insurance funds referred to in Article II, Section E. and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

#### ARTICLE IV—UNDERTAKINGS OF THE GOVERNMENT

A. Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections C, D, and E. Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than \$5,000, and in no case

more than \$5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D;
2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and
3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.
2. A mechanism to assist in clarification of coverage and claims questions.
3. Other assistance as needed.

#### ARTICLE V—COMMENCEMENT AND TERMINATION

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the FEDERAL REGISTER and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for a period not to exceed one (1) year following the original term of this Arrangement, or any renewal thereof, or (2) the transfer to the FIA of:

1. All data received, produced, and maintained through the life of the

Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

2. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

3. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force that shall be allowed to run their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies

issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

#### ARTICLE VI—INFORMATION AND ANNUAL STATEMENTS

The Company shall furnish to FEMA such summaries and analyses of information including claim file information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

#### ARTICLE VII—CASH MANAGEMENT AND ACCOUNTING

A. FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Ac-

counting Procedures Manual or procedures approved in writing by the FIA.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities that shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

#### ARTICLE VIII—ARBITRATION

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination that shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this

section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

#### ARTICLE IX—ERRORS AND OMISSIONS

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

#### ARTICLE X—OFFICIALS NOT TO BENEFIT

No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

#### ARTICLE XI—OFFSET

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on ac-

count of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

#### ARTICLE XII—EQUAL OPPORTUNITY

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

#### ARTICLE XIII—RESTRICTION ON OTHER FLOOD INSURANCE

As a condition of entering into this Arrangement, the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which

flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

#### ARTICLE XIV—ACCESS TO BOOKS AND RECORDS

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement.

Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

#### ARTICLE XV—COMPLIANCE WITH ACT AND REGULATIONS

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, the National Flood Insurance Reform Act of 1994, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

#### ARTICLE XVI—RELATIONSHIP BETWEEN THE PARTIES (FEDERAL GOVERNMENT AND COMPANY) AND THE INSURED

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any

taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

[61 FR 37689, July 19, 1996]

#### APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

##### *A Plan to Maintain Financial Control for Business Written Under the Write Your Own Program*

Under the Write Your Own (WYO) Program, the Federal Insurance Administrator (Administrator) may enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance, whereby these companies may offer flood insurance coverage to eligible property owners using their customary business practices. To facilitate the marketing of flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO Company policies issued under the WYO Arrangement. To ensure that any taxpayer funds are accounted for and appropriately expended, the Federal Insurance Administration (FIA) and WYO Companies will implement this Financial Control Plan. Any departures from the requirements of this Plan must be approved by the Administrator. The authority for the WYO Program is contained in section 1345 of the National Flood Insurance Act of 1968, 42 U.S.C. 4081, and 44 CFR parts 61 and 62, §§61.13 and 62.23. The WYO Financial Assistance/Subsidy Arrangement (Arrangement) which is included in appendix A of this part is hereby made a part of this Financial Control Plan.

WYO Companies are subject to audit, examination, and regulatory controls of the various states. Additionally, insurance company operating departments are customarily subject to examinations and audits performed by Company internal audit or quality control departments, or both, and independent CPA firms. It is intended that this Plan use to the extent possible, the findings of these examinations and audits as they pertain to business written under the WYO Program (Parts 3 and 4).

The WYO Financial Control Plan contains several checks and balances that can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of Company files by the FIA staff or their designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance



Departments, NAIC Zone examinations, and independent CPA firms.

The WYO Financial Control Plan requires the WYO Company to meet the minimum requirements established by the Standards Committee. The Standards Committee consists of four (4) members from FIA, one (1) member from the Federal Emergency Management Agency's (FEMA's) Office of Financial Management, one (1) member designated by the Administrator who is not directly involved in the WYO Program, and one (1) member from each of six (6) designated WYO Companies, pools or other entities.

The WYO Financial Control Plan must require the WYO Company to:

1. Have a biennial audit of the flood insurance financial statements and claims and underwriting activity conducted by an independent accounting firm at the Company's expense to ensure that the financial data reported to FIA accurately represents the flood insurance activities of the Company. Require that the CPA firm's audit be performed in accordance with GAO yellow book requirements. Require that the auditors conduct their own review sample, even if pre-selected policy and claims files are given to them for review.

2. Meet the recording and reporting requirements of the WYO Transaction Record Reporting and Processing Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Bureau and Statistical Agent by the WYO Company under the WYO Transaction Record Reporting and Processing Plan will be analyzed by the Bureau and Statistical Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company's submissions, the disposition of transactions that do not pass systems edits, and the reconciliation of the total generated from transaction reports with those submitted on the WYO Company's reports (part 1).

3. Cooperate with FEMA's Office of Financial Management on Letter of Credit matters.

4. Cooperate with FIA in the implementation of a claims reinspection program (part 2).

5. Cooperate with FIA in the verification of risk rating information.

6. Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

The Standards Committee will review and make a recommendation to the Administrator concerning any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to, the FIA Operations Division's recommendation not to renew a particular Company's WYO arrangement.

This Plan includes the following guidelines:

Part 1—Transaction Record Reporting and Processing Plan Reconciliation Procedures

Part 2—Claims Reinspection Program

Part 3—Financial Audits, Underwriting Audits, Claims Audits, Audits for Cause, and State Insurance Department Audits

Part 4—Reports Certifications

Part 5—WYO Financial Assistance/Subsidy Arrangement (Incorporated by Reference)

Part 6—Transaction Record Reporting and Processing Plan (Incorporated by Reference)

Part 7—Write Your Own (WYO) Accounting Procedures Manual (Incorporated by Reference)

*Part 1—Transaction Record Reporting and Processing Plan Reconciliation Procedures, Transaction Record Reporting and Processing Plan Reconciliation Objectives*

The objectives are: To reconcile transaction detail with monthly financial statements submitted by the WYO Companies; to assess the quality and timeliness of submitted data; and to provide for the identification and resolution of discrepancies in the data. The reliance on computer processing to perform the review of transaction and financial data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by the NFIP Bureau and Statistical Agent.

The review of monthly financial statements and transaction level detail will involve six areas:

- A. Financial control;
- B. Quality control (audit trails);
- C. Quality review of submitted data;
- D. Policy rating;
- E. Timeliness of reporting; and
- F. Monthly reports.

#### A. Financial Control

1. WYO Companies are required to submit a reconciliation report (Exhibit "A") with the submission of transaction level detail. This report will reconcile the transaction records data to the financial report, explaining any discrepancies.

2. WYO Companies are required to submit, on a form approved by the Administrator, a tape transmittal document with the submission of the statistical tape containing transaction detail. This will be used to validate record counts and dollar amounts.

3. The NFIP will review, at a minimum, the categories on the attached format and produce a similar report reconciling the transaction data to the monthly financial statement submitted by each WYO Company.

4. To facilitate financial reconciliation, transaction records which do not pass various edits employed by the NFIP to review

the quality of submitted data will be so identified, but will be maintained whenever possible until the error is corrected by the company in order to reconcile all financial data submitted to the NFIP.

#### B. Quality Control

Transaction level detail will be maintained in policy and claim history files for record-keeping and audit purposes.

#### C. Quality Review of Submitted Data

1. Transaction records will be edited for correct format and values.
2. Relational edits will be performed on individual transactions as well as between policy and claim transactions submitted against those policies.
3. Record validation will be performed to check that the transaction type is allowable for the type of policy or claim indicated.
4. Errors will be categorized as critical or non-critical. The rate of critical errors in the submission of statistical data will be the basis by which company performance is reported to the Standards Committee. Critical errors include those made in required data elements. Required data elements:
  - a. Identify the policyholder, the policy, the loss, and the property location;
  - b. Provide information necessary to rate the policy;
  - c. Provide information used in financial control; and
  - d. Provide information used for actuarial review of NFIP experience.
5. Non-critical errors are those made in data elements reported by the WYO Companies at their option.

#### D. Policy Rating

1. The rating will be validated by the NFIP for all policies for which the following transactions have been submitted:
  - a. New Business;
  - b. Renewals;
  - c. Endorsements involving type A transaction records; and
  - d. Corrections of type A transaction records previously submitted for premium transactions.
2. Incorrect rating will be considered a critical error.

#### E. Timeliness of Reporting

1. WYO Companies will be expected to submit monthly statistical and financial reports within thirty days of the end of the month of record.
2. The NFIP will produce reports based on review of submitted data within thirty days after the due date or the first processing cycle subsequent to the receipt of WYO Company submissions, whichever is later.

#### F. Monthly Reports

1. Reports for each WYO Company's data submission will be sent to the respective WYO Company and the FIA explaining any discrepancies found by the NFIP review.
2. Report to WYO Companies. Transaction records that fail to pass the quality review or policy rating edits will be reported to the appropriate Company in transaction detail with error codes, classification of errors as either critical or non-critical and any codes used by the Company to identify the source of the transaction data.
3. Reports to WYO Companies and the FIA:
  - a. Summary statistics will be generated for each monthly submission of transaction data. These will include:
    - i. Absolute numbers of transactions read and transactions rejected by transaction type; and
    - ii. Dollar amounts associated with transactions read and transactions rejected.
  - b. Summary statistics for all policy and claim records submitted to date (which may each be the result of multiple transactions) will be generated, separately for critical and non-critical errors. These will include:
    - i. Absolute number of policy and claim records on file and those containing errors; and
    - ii. Relative values for the number of records containing critical errors.
  - c. Control totals will be generated for tapes submitted to and processed by the NFIP. This front-end balancing procedure will include:
    - i. Numbers of records submitted according to the NFIP compared with numbers of records submitted according to the WYO Company transmittal document; and
    - ii. Dollar amounts submitted according to the NFIP compared with dollar amounts submitted according to the WYO Company transmittal document.
  - d. If there is any discrepancy between the NFIP reading of dollar amounts from the tape and the WYO Company tape transmittal document, then the monthly statistical tape submission will be rejected and returned to the Company. The rejected tape must be corrected and resubmitted by the next monthly submission due date.
  - e. In cases where the NFIP reconciliation of transaction level detail with the financial statements does not agree with the reconciliation report submitted by the WYO Company, a separate report will be generated and transmitted to the Company for resolution and to the FIA.

#### *Reporting of Company Rating to the Standards Committee and the Administrator*

##### A. Satisfactory Rating

An annual end of the year report will be submitted to convey the satisfactory rating

of WYO Companies' submission of transaction data and the reconciliation of these data with financial reports.

#### B. Unsatisfactory Rating

The report of an unsatisfactory rating will be submitted as soon as errors and problems reach critical threshold levels. This rating will be based on: Continuing problems in reconciling transaction data with financial reports; statistics on the percentage of transactions submitted with critical errors; the percentage of policy and claim records on file that contain critical errors; and late submission of statistical and financial reports.

#### EXHIBIT "A".—WYO STATISTICAL TAPE— TRANSMITTAL DOCUMENT

Date Sent: \_\_\_\_\_

WYO Prefix Code: \_\_\_\_\_

Address: \_\_\_\_\_

Reel Number(s) of Enclosed  
Tapes: \_\_\_\_\_

Density \_\_\_\_\_

LRECL \_\_\_\_\_

Blocksize \_\_\_\_\_

File Name (DSN) \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact Number \_\_\_\_\_

IBU No. (WYO Use Only) \_\_\_\_\_

#### Monthly Reconciliation—Net Written Premiums

Company name \_\_\_\_\_

Co. NAIC No. \_\_\_\_\_

Month/year ending \_\_\_\_\_

Date submitted \_\_\_\_\_

Preparer's name \_\_\_\_\_

Telephone No \_\_\_\_\_

Monthly financial report	Monthly statistical transactions report		
	Trans. code	Record count	Premium amount
Net Written premiums .....	\$		
(Income statement = Line 100 .....	11		\$
	15		
	17		
Unprocessed statistical:			
(+) Prior month's .....	20		
(-) Current month's .....	23		
Other—Explain:			
(+) Current month's .....	26		(-)
(-) Prior month's .....	29		(-)
	14 and 81		(+)
Total .....	Total:		
	(Add 11 Through 23 less 26 and 29)		
Comments:			

#### Monthly Reconciliation—Losses

Company name \_\_\_\_\_

Co. NAIC No. \_\_\_\_\_

Month/year \_\_\_\_\_

Date submitted \_\_\_\_\_

	Trans. code	Record count	Loss/paid recoveries
100 Net paid losses .....	\$		
(Income statement line 115)			
Unprocessed statistical:			
	31		\$
140 (+) Prior month's .....	34		
	37		
150 (-) Current month .....	40		
	43		
160 Salvage not to be reported by transaction (explain).			
170 Other—Explain .....	46 and 61		
	49		
	64		
	84 and 87		
	52 Recovery		
	Salvage		

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	Trans. code	Record count	Loss/paid recoveries
	Subrogation	.....	.....
	67 Recovery	.....	.....
	Salvage	.....	.....
	Subrogation	.....	.....
Total: .....	Total:	.....	.....
(Sum of Lines 100, 140, 160, and 170 less 150).	(Add 31, 34, 40 through 64 less 52 and 67)		
Comments:			

Monthly Reconciliation—Special Allocated LAE \_\_\_\_\_  
Company name \_\_\_\_\_  
Co. NAIC No. \_\_\_\_\_  
Month/year ending \_\_\_\_\_  
Date submitted \_\_\_\_\_

Monthly financial report	Monthly statistical transaction report		
	Trans. code	Record count	Amounts
Special allocated loss adjustment expenses .....		.....	.....
(Other loss and LAE Calc.—Line 655)		.....	.....
	71	.....	\$ .....
	74	.....	.....
Unprocessed statistical:			
(+) Prior Month .....		.....	.....
(-) Current Month .....		.....	.....
Other—Explain:			
(1) .....		.....	.....
(2) .....		.....	.....
Total: .....	Total:	.....	.....
Comments:			

## Monthly Reconciliation—Net Policy Service Fees

Company Name \_\_\_\_\_  
Co. NAIC No. \_\_\_\_\_  
Month/Year Ending \_\_\_\_\_  
Date Submitted \_\_\_\_\_

Monthly Financial Report  
Net Policy Service Fees (Income Statement Line 170):

\$ \_\_\_\_\_  
Unprocessed statistical:  
(+) Prior Month's \_\_\_\_\_  
(-) Current Month's \_\_\_\_\_  
Other—Explain:  
(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
Total \_\_\_\_\_  
Comments:

Monthly Statistical Transaction Report  
Record Count: \_\_\_\_\_  
Fee Amount: \_\_\_\_\_

Total: \_\_\_\_\_  
(Approved by the Office of Management and Budget under OMB control number 3067-0169.)

## Part 2—Claims Reinspection Program

## WYO-NFIP Claims Reinspection Program

To keep WYO-NFIP Claims Management informed, to assist in the overall claims operation, and to provide necessary assurances and documentation for dealing with GAO, Congressional Oversight Committees, and the public, the FIA and WYO Companies have established a Claims Reinspection Program. The Program is comprised of the following major elements:

A. All files are subject to reinspection.

B. Files for reinspection may be randomly selected by flood event, or size of loss, or class of business, as determined by WYO-NFIP Claims Management.

C. WYO-NFIP Claims Management will utilize a binomial table to define sample size for reinspections prior to payment. A larger sample may be used depending upon error ratio.

D. An agreed upon sample of closed files, by event, will be subjected to reinspection as well.

E. A WYO representative will conduct the reinspection, accompanied by an NFIP General Adjuster.

F. A joint, single report will be issued by the WYO Company representative and the NFIP General Adjuster.

G. Copies of reinspection reports will be forwarded to the Claims Management of both the WYO Company and the NFIP.

*Part 3—Biennial Financial Audits, Underwriting Audits, Claims Audits, Audits for Cause, and State Insurance Department Audits*

**A. Biennial Financial, Underwriting and Claims Audits**

1. Objectives of WYO Biennial Financial Underwriting and Claims Audit. The biennial, financial, underwriting and claims audit is intended to provide the Federal Emergency Management Agency with independent assessment of the quality of financial controls over activities relating to the Company's participation in the National Flood Insurance Program as well as the integrity of the underwriting and claims data reported to FEMA.

a. Participating WYO companies are responsible for selecting and funding independent Certified Public Accounting firms to conduct the biennial audits. Such costs are considered part of the normal administrative cost of operating the WYO program and as such are included in the WYO expense allowance.

b. The WYO Company's representative will be notified in writing to arrange for a biennial audit. This notice should provide the WYO Company at least 120 days to prepare for the biennial audit.

c. It is also intended that the biennial audit will reduce if not eliminate the need for FEMA auditors or their designees to conduct on-site visits to WYO companies in their review of financial activity. However, the requirement may still exist for such visits to occur as determined by the auditors. The CPA firm's audit shall be performed in accordance with GAO yellow book requirements. Further, the CPA firm is required to select its own sample, even though FIA may provide them with pre-selected policy and claim files for review. In addition, nothing in this section should be construed as limiting the ability of the General Accounting Office or FEMA's Office of Inspector General to review the activities of the WYO Program.

d. The purpose of the biennial audit is to provide opinion on the fairness of the financial statements, the adequacy of internal controls, and the extent of compliance with laws and regulations.

e. Any WYO Company which has been subject to a comprehensive audit by the CPA

firm under contract with the FEMA OIG is exempted by its selected Certified Public Accountant firm. Only the remaining unaudited fiscal year of the two years normally to be reviewed under the biennial audit will be examined. Policy and claim related financial data as reported to the NFIP are proper and adequately supported by underlying documentation.

**B. Audits for Cause**

In accordance with the terms of the Arrangement, the Administrator, on his/her own initiative or upon recommendation of the WYO Standards Committee or the FEMA Inspector General, may conduct for-cause audits of participating companies. The following criteria, in combination or independently, may constitute the basis for initiation of such an audit.

*1. Underwriting*

a. Excessively high frequency of errors in underwriting.

i. Issuing policies for ineligible risks.

ii. Issuing policies in ineligible communities.

iii. Consistent premium rating errors.

iv. Missing or insufficient documentation for submit for rate policies.

v. Other patterns of consistent errors.

b. Abnormally high rate of policy cancellations or non-renewals.

c. Policies not processed in a timely fashion.

d. Duplication of policy coverage noted.

e. Relational type edits indicate an usually high or low premium amount per policy for the geographical area.

f. Biennial audit results indicate usual volume of errors in underwriting.

*2. Claims*

a. Reinspection indicates consistent patterns of:

i. Losses being paid when not covered.

ii. Statistical information being reported on original loss adjustment found to be incorrect on reinspection.

iii. Salvage/subrogation not being adequately addressed.

iv. Consistent overpayment of claims.

b. Unusually high count of erroneous assignments and/or claims closed without payment (CWP).

c. Unusually low count of CWP. (May indicate inadequate follow-up of claims submitted).

d. Average claim payments that significantly exceed the average for the Program as a whole.

e. Lack of (adequate) documentation for paid claims.

f. Claims not processed in a timely fashion.

g. Consistent failure of WYO Company to receive authorization for special allocated loss adjustment expenses prior to incurring them.

h. High submission of Special Allocated Loss Adjustment Expenses (SALAE).

i. Consistently high policyholder complaint level.

j. Low/high count of salvage/subrogation.

k. Biennial audit indicates significant problems.

3. *Financial Reporting/Accounting*

a. Consistently high reconciliation variations and/or errors in statistical information.

b. Financial and/or statistical information not received in a timely fashion.

c. Letter of Credit violations are found.

d. WYO Company is not depositing funds to the Restricted Account in a timely manner, or funds are not being transferred through the automated clearinghouse on a timely basis.

e. Premium suspense is consistently significant, older than 60 days, and/or cannot be detailed sufficiently, or both.

f. Large/unusual balance in Cash-Other (Receivables and/or Payable).

g. Large, unexplained differences in cash reconciliation.

h. Large/unusual balances or variations between months noted for key reported financial data.

i. Financial statement to statistical data reconciliation sheets improperly completed indicating proper review of information is not being performed prior to signing certification statement.

j. Repeated failure to respond fully in a timely manner to questions raised by FIA or the NFIP Bureau and Statistical Agent concerning monthly financial reporting.

k. Biennial audit indicates significant problems.

C. Underwriting Audit

1. Samples of new business policies, renewals, endorsements and cancellations will be provided by the FIA with the biennial audit instructions, including samples of the Mortgage Portfolio Protection business, where applicable. The audit is to be conducted in accordance with GAO yellow book requirements. The CPA firm may supplement with its own sample of risks which were in force during all or part of the Arrangement Year under audit for detail testing.

2. *Underwriting Audit Outline*

a. Review of the Underwriting Department's responsibilities, authorities and composition.

b. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

c. Administrative review to verify compliance with company procedures.

d. Thorough examination of a random sample of underwriting files to measure the qual-

ity of work. The CPA firm is expected to provide a representative sample of its review to substantiate its opinion and findings. At a minimum, the files should be reviewed to verify the following:

i. Policies are issued for eligible risks;

ii. Rates are correct and consistent with the amount of insurance requested on the application;

iii. Waiting period for new business is consistent with government regulations;

iv. Elevation certification or difference is correctly shown on application;

v. The coverage does not include more than one building and/or its contents per policy;

vi. No binder is effective unless issued with the authorization of FIA;

vii. The FIRM zone shown on the application to the community in which the property is located;

viii. Community shown on application is eligible to purchase insurance under the NFIP;

ix. Information on type of building, etc., is fully complete;

x. Applicable deductibles are recorded;

xi. A new, fully completed application or a photocopy of the most recent application, or similar documentation, with the appropriate updates to reflect current information is on file for each risk, including those formerly written by the NFIP Servicing Facility;

xii. If any files to be audited are unavailable, determine the reason for the absence.

e. Endorsement Processing.

1. Complete tasks as applicable.

2. Review requests for additional coverage to ensure that they are subject to the waiting period rule.

3. Review controls established to ensure that no risk is insured under endorsement provisions that are not acceptable as a new business risk (i.e., a property located in a suspended community).

f. Cancellation Processing. Verify controls to ensure that one of the necessary reasons for cancellation exists and that the transaction is accompanied by proper documentation.

g. Renewal Processing. Determine controls to ensure that all necessary information needed to complete the transaction is provided.

h. Expired Policies. Determine controls to ensure that each step is carried out at the proper time.

i. Observance of Waiting Period. Establish procedures to document, as a matter of WYO Company business record and in each transaction involving a new application, renewal, and endorsement, that any applicable effective date and premium receipt rules have been observed (44 CFR 61.11). Documentation reasonably suitable for the purpose includes retention of postmarked envelopes (for three (3) years) from date, date stamping and retention (via hard copy or microfilm process)

of application, renewal and endorsement documents and checks received in payment of premium; computer input of document and premium receipt transactions and retention of such records in the computer system; and other reasonable insurer methods of verifying transactions involving requests for coverage and receipts of premium.

#### D. Claims Audit Outline

1. Review of the Claims Department's responsibilities, authorities, and composition.
2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.
3. Administrative review to verify compliance with company procedures.
4. Thorough examination of a random sample of claims files which may be provided by FIA to measure the quality of work. At a minimum, the files should be reviewed to verify the following:
  - a. Verify controls to ensure that a file is set up for each Notice of Loss Received.
  - b. Review adjuster reports to determine whether they contain adequate evidence to substantiate the payment or denial of claims, including amount of losses claimed, any salvage proceeds, depreciation and potential subrogation.
  - c. Ascertain that building and contents allocations are correct.
  - d. Determine whether the file contains evidence identifying subrogation possibilities.
  - e. Verify that partial payments were properly considered in processing the final draft or check.
  - f. Verify that the loss payees are listed correctly (consider insured and mortgagee).
  - g. Verify that the total amount of the drafts or checks is within the policy limits.
  - h. Ascertain the relevance and validity of the criteria used by the carrier to judge effectiveness of its claims servicing operation.
  - i. Confirm that when information is received from an independent adjuster, the examiner either acts promptly to give proper feedback with instructions or takes action to pay or deny the loss.
  - j. Determine whether the Claims Department is using an "impression of risk" program in reporting misrated policies, etc.
  - k. Where attempts at fraud occur, verify that these instances are being reported to FIA for referral to the FEMA Inspector General's office.
  - l. If any files to be audited are unavailable, determine the reason for their absence. In undertaking this portion of the biennial audit, the Administrative Review Checklist (Exhibit B) below should be utilized.

#### EXHIBIT "B"—ADMINISTRATIVE REVIEW CHECKLIST

Policy #:

Insured's Name:  
State:  
Date of loss:  
Date paid:  
Date reported:  
Amt. of loss: \$  
Bldg: \$  
Contents: \$  
Adjusting firm:  
Examiner's name:  
Comments:

#### 1. Investigation and Adjustments

	Yes	No	N/A
A. Application of Coverage.			
(1) Insurable Interest? ....	[ ]	[ ]	[ ]
(2) Is loss from the flood peril? .....	[ ]	[ ]	[ ]
(3) Did loss occur within the policy term? .....	[ ]	[ ]	[ ]
(4) Does location and description of risk coincide with policy information? .....	[ ]	[ ]	[ ]
(5) Were proper deductibles applied? ....	[ ]	[ ]	[ ]
(6) Other insurance considered? .....	[ ]	[ ]	[ ]
(7) Other losses? .....	[ ]	[ ]	[ ]
B. Application of Sound Adjusting Practices:			
(1) Was adjuster's report accurate/complete? .....	[ ]	[ ]	[ ]
(2) Was an attorney used in the settlement? .....	[ ]	[ ]	[ ]
(3) Was a technical expert used in the settlement? .....	[ ]	[ ]	[ ]
C. Documentation:			
(1) Are damages clearly identified? .....	[ ]	[ ]	[ ]
(2) Are damages flood related? .....	[ ]	[ ]	[ ]
(3) Are damages clearly and completely itemized and documented by the adjuster? .....	[ ]	[ ]	[ ]
(4) Was depreciation considered? .....	[ ]	[ ]	[ ]
(5) Has subrogation been considered? .....	[ ]	[ ]	[ ]
(6) Has salvage been properly handled? .....	[ ]	[ ]	[ ]
(7) Was salvage timely? ..	[ ]	[ ]	[ ]
2. Supervision:			
a. Assignments:			
(1) Are assignments made promptly? .....	[ ]	[ ]	[ ]
(2) Is insured contacted promptly? .....	[ ]	[ ]	[ ]
b. Reserves:			
(1) Are initial reserves indicated on the first report? .....	[ ]	[ ]	[ ]

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	Yes	No	N/A		Yes	No	N/A
(2) Are they adequate? ...	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(1) Was there other coverage by the WYO Company? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Does final settlement compare favorably with last reserve established? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(2) Were damages correctly apportioned? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Diary Control:				(3) Was a solo adjuster used? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) Automatic? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(4) Were there prior flood claims? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Timely? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(5) Were prior damages repaired? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Is file reviewed at diary date with examiner's comments? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(6) Were prior claim files reviewed? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Examiner Evaluation and Settlement Performances:				(7) Was a Congressional complaint letter in file? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) Is examiner directing adjuster when needed? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(8) Was it responded to promptly? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) Are files documented? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(9) Is the statistical reporting correction file being properly managed? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) Is adequate control maintained over in-house adjuster? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	E. State Insurance Department Examination			
(4) Is adequate control maintained over outside adjuster? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	1. It is expected that audits of WYO companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and providing a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition, when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided to the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.			
e. Salvage and subrogation:				2. The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusion. "(Approved by the Office of Management and Budget under OMB control number 3067-0169)"			
(1) Is salvage evaluated by salvors? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Certification Statement for Monthly Financial and Statistical Reconciliation Reports.			
(2) Is salvage disposed of promptly? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	I have reviewed the accompanying financial and statistical reconciliation reports of XYZ Company as of _____. All information included in these statements is the representation of the XYZ Company.			
(3) Are salvage returns adequate? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Based on my review (with the exception of the matter(s) described in the following paragraphs, if applicable), I certify that I am not aware of any material modifications that should be made to the accompanying reports.			
(4) Is potential subrogation being promptly and properly investigated? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Signed _____			
(5) Are proper subrogation forms used? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(Responsible Financial Officer)			
(6) Are subrogation and salvage files properly opened, diared, and referred (if appropriate)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(7) Are recovery funds for subrogation and salvage being properly handled? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
f. Suits:							
(1) Are suits properly identified? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(2) Are suits being properly evaluated? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(3) Are suits being referred to attorneys promptly? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(4) Are attorneys being advised as to handling settlement or compromise? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(5) Are suits being properly controlled? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(6) Are suits files properly diared? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
(7)-(8) [Reserved].							
g. Other:							



## § 63.1

Date \_\_\_\_\_

### B. Certification Statement for Monthly Statistical Transaction Report

I have reviewed the accompanying statistical transaction report control totals in conjunction with appropriate statistical reconciliation reports. All information included in these reports is the representation of the XYZ Company. "(Approved by the Office of Management and Budget under OMB control number 3067-0169)."

Signed \_\_\_\_\_  
(Responsible Reporting Officer)

Date \_\_\_\_\_

[61 FR 51221, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51221, Oct. 1, 1996, Appendix B to part 62 was revised, effective Oct. 31, 1996.

## PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

### Subpart A—General

Sec.

- 63.1 Purpose of part.
- 63.2 Condemnation in lieu of certification.
- 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.
- 63.4 Property not covered.
- 63.5 Coverage for contents removal.
- 63.6 Reimbursable relocation costs.
- 63.7 Amount of coverage and deductible on effective date of condemnation or certification.
- 63.8 Limitation on amount of benefits.
- 63.9 Sale while claim pending.
- 63.10 Demolition or relocation contractor to be joint payee.
- 63.11 Requirement for a commitment before October 1, 1989.
- 63.12 Setback and community flood plain management requirements.

### Subpart B—State Certification of Structures Subject to Imminent Collapse

- 63.13 Purpose of subpart.
- 63.14 Criteria for State qualification to perform imminent collapse certifications.
- 63.15 State application for eligibility to certify structures subject to imminent collapse.
- 63.16 Review of State application by the Administrator.
- 63.17 Procedures and data requirements for imminent collapse certifications by States.
- 63.18 Review of State certification by the Administrator.

## 44 CFR Ch. I (10–1–96 Edition)

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 53 FR 36975, Sept. 23, 1988, unless otherwise noted.

### Subpart A—General

#### § 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

#### § 63.2 Condemnation in lieu of certification.

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property